Supreme Court, U.S.
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Case No. 99-1325

In the

United States Supreme Court

ENVIRON PRODUCTS, INC.
Petitioner,

v.

INTELPRO CORPORATION
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Federal Circuit

PETITIONER'S REPLY BRIEF

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PARTIES

In addition to the parties listed in the caption, the following was a party to the proceedings in the district court (as co-plaintiff):

Total Containment, Inc.

Total Containment did not participate in the appeal.

PETITIONER'S CORPORATE DISCLOSURE

Petitioner Environ Products, Inc. has neither a parent nor subsidiary company, and is privately held.

Introduction

Respondent Intelpro has opposed petitioner Environ's plea to this Court for review of the Federal Circuit's decision on standing in this matter with two principal arguments. First, respondent posits that petitioner has ignored an "entire body of case law" that has established that Federal Rule of Civil Procedure 25(c) does not create jurisdiction beyond the limits of Article III. Second, respondent states that it proved its standing independent of its status under Rule 25(c).

Petitioner submits this Reply to make two simple points in response. Respondent would be correct about the body of case law pertaining to Rule 25(c) if the dispute here was about the Rule's application in the *district* courts. But no case has ever held, or even suggested, that Rule 25(c) could be the sole basis for conferring standing to appeal a judgment, and thus serve as the basis for the exercise of the jurisdiction of a court of appeals. Respondent has certainly cited none in its Opposition. Every case cited by respondent applies Rule 25(c) where it was intended to be applied—in the district courts. The Federal Circuit's holding on standing in this case went far beyond that in any of the cases cited by respondent.

The questions presented inquire whether the application of Rule 25(c) to a case on appeal, without any inquiry into the case or controversy necessity that satisfies Article III, is sufficient to meet this Court's requirement that standing (jurisdiction) must be established at every level of the federal courts. Respondent's first argument does not address the questions presented, but rather answers a question about Rule 25(c) applied in the district court, a question not presented here.

Respondent's second argument sidesteps the questions. Respondent fails to acknowledge that the Federal Circuit ignored all of the factors that respondent cites in favor of its standing to appeal and based its decision solely on the application of Rule 25(c) to an appeal. It is this unprecedented decision that petitioner seeks to have reviewed. The question of respondent's standing to appeal based on other factors, all of which are insufficient under law, can be settled as an adjunct to deciding the questions presented.

Respondent's Cases Do Not Establish That Rule 25(c) Has Been Applied Beyond The District Court

Respondent cites the footnote in *Navarro Savings Association v. Lee*, 446 U.S. 458, 459 (1980) for the proposition that this Court has already applied Rule 25(c) outside the district court to permit the original parties to appeal.[1] Respondent's reading *of Navarro Savings* is incorrect.

In the Texas district court, eight trustees owning real estate investments comprising the *res* of the trust filed suit against the defendant. The eight were trustees of Fidelity Mortgage Investors. For reasons not important here, the Texas district court dismissed the case for want of diversity jurisdiction. During the appeal, Fidelity merged into a Delaware corporation.

This fact is recounted in the cited footnote of the Supreme Court's opinion. It is in the opinion because the case was never tried in the district court and, because this

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[1] Intelpro even calls the footnote the "holding" of the case.

Court affirmed the Fifth Circuit's reversal of the district court, the case was returning to the district court for further proceedings. Thus, the Court pointed out that the change in proprietorship over the trustees from Fidelity to a merged entity did not affect jurisdiction because jurisdiction *in the district court* was established when the suit was commenced. Rule 25(c) permitted the original parties to continue the litigation *in the district court*. The Court never addressed jurisdiction (standing) at the appellate level because it was not necessary to do so.

It is important to note what the Fifth Circuit held. It reversed the district court dismissal because the eight trustees (not the shareholders of the trust) were the real parties in interest in the case. The Supreme Court agreed. Thus, it was not necessary to inquire about standing and jurisdiction in either the court of appeals (the real parties in interest brought the appeal) or in this Court. In fact, the Navarro Savings party ("Petitioner") appealed to the Supreme Court, which negated any necessity to inquire into the standing of the trustees ("Respondents") in this Court. Rule 25(c) had absolutely nothing to do with the proceedings in either the Fifth Circuit or the Supreme Court.

Thus, the footnote in *Navarro Savings* says nothing about the question presented in petitioner's Petition for Certiorari. It does not say that Rule 25(c) "permit[s] the original parties to continue the litigation on appeal," quoting respondent. The footnote simply stated that the original parties could continue the litigation under Rule 25(c) on remand to the district court.

Likewise, not one of the remaining cases cited in respondent's "entire body of law" even suggests the application of Rule 25(c) beyond the district courts. They can be addressed quickly in turn.

The Third Circuit in *Natural Resources Defense Council, Inc. v. Texaco Refining and Marketing, Inc.*, 2 F.3d 493, 506 (3d Cir. 1993) said absolutely nothing about Rule 25(c) applied to an appeal. The court merely applied Rule 25(c) in the way it was intended, observing that after a transfer of interest during the district court proceedings the new owner of the interest was bound by the judgment even though it had not been a party to the proceedings.

In *Minnesota Mining & Manufacturing Co. v. Eco Chem, Inc.*, 757 F.2d 1256, (Fed.Cir. 1985), the court's decision addressed the constitutionality of Rule 25(c) applied in the district court, not a court of appeals. The Federal Circuit referred to several other cases from the various circuit courts that stood for the proposition that substitution of a party under Rule 25(c) in district court proceedings after a transfer in interest was not an extension of *the district court's* jurisdiction in violation of Rule 82. The jurisdiction of the district court was established when it was properly invoked at the time the litigation commenced. The court also went to some length to recount the Sixth Circuit's observation, in *Television Reception Corp. v. Dunbar*, 426 F.2d 174 (6th Cir. 1970), that joinder of a transferee party under Rule 25(c) was a matter of procedural convenience for the district court, as the Rule intended. Nothing in the Federal Circuit's opinion, nor in the opinions of any of the cases it cited, suggested that Rule 25(c) could have the effect of establishing standing for a party in a court of appeals proceeding.

Finally, respondent's citations to *General Battery Corp. v. Globe-Union, Inc.*, 100 F.R.D. 258 (D.Del. 1982) and *Hilbrands v. Far East Trading Co., Inc.*, 509 F.2d 1321 (9th Cir. 1975) are equally devoid of information that applies to the present question. In each case, the court applied Rule 25(c) to the district court proceedings only. In neither case is

the question of Rule 25(c)'s application to a court of appeals proceeding raised or discussed.

What each of these cases has in common is very important to the consideration of the present Petition for Certiorari. The courts uniformly state that the application of Rule 25(c) in the district court is a procedural convenience that has no effect on the substantive legal posture of the case. In other words, the courts continually emphasize the *procedural aspect* of Rule 25(c) as it was intended to be applied. Given this emphasis, it is doubly clear that this procedural rule for district court proceedings cannot overcome this Court's rule stated in *Willy v. Coastal Corp.*, 503 U.S. 131, 112 S.Ct. 1076, 117 L.Ed.2d 280 (1992):

> Such a caveat applies *a fortiori* to any effort to extend by rule the judicial power of the United States described in Article III of the Constitution. **The Rules, then, must be deemed to apply, only if their application will not impermissibly expand the judicial authority conferred by Article III.** [Emphasis added.]

Combined with this Court's rule that standing must be shown anew by a party invoking the jurisdiction of a federal appellate court in order to satisfy the requirements for Article III jurisdiction,[2] it is clear that applying Rule 25(c) to establish standing to appeal is a violation of the *Willy* rule. The Federal Circuit unlawfully used the district court procedural rule to create appellate jurisdiction when

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[2] "The standing Article III requires must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64, 117 S.Ct. 1055, 1067, 137 L.Ed.2d 170 (1997).

respondent was actually obliged to show on its own merit that it had standing to appeal.

Though respondent argues in its Opposition Brief that it made such a showing, the Federal Circuit ignored the facts upon which respondent places such faith. The Federal Circuit specifically stated that it relied only upon the application of Federal Rule of Civil Procedure 25(c) to establish respondent's standing to appeal. As that reliance was legally and constitutionally improper, Environ petitions for review by this Court.

Respectfully submitted,

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Petitioner

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